

STATE OF MICHIGAN  
COURT OF APPEALS

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CHERYL MICHALSKI,

Plaintiff-Appellee,

v

DEPARTMENT OF HUMAN SERVICES,

Defendant-Appellant.

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UNPUBLISHED

January 28, 2014

No. 312067

Grand Traverse Circuit Court

LC No. 12-029169-AA

Before: SAWYER, P.J., and BECKERING and SHAPIRO, JJ.

PER CURIAM.

Defendant appeals as by leave granted from an order of the circuit court reversing defendant's order revoking plaintiff's license to operate a child-care home. We reverse.

On April 18, 2011, Erin Cox, a veterinary technician at an animal hospital, reported to defendant that plaintiff had left children unattended in her car while she brought a pet into the hospital for an appointment. She testified that she had witnessed plaintiff leave children unattended in her car for approximately one hour on a previous occasion. She informed defendant that plaintiff had another appointment at the animal hospital the following week. A week later, child-care licensing consultants Marie Walker and Adam Robarge observed plaintiff leave children unattended in her car at the animal hospital. They confronted plaintiff, who stated that she did not know that it was against defendant's rules to leave children unattended in a car.

On August 10, 2011, defendant sent plaintiff a notice of intent to revoke her certificate of registration to operate a child-care home, citing the above incident and others where plaintiff allegedly did not properly supervise the children in her care. The hearing referee found that plaintiff's violations were substantial but not willful. On review, defendant found that plaintiff's violations were willful because she had certified that she had reviewed the rules and agreed to comply with them in her license renewal application. Plaintiff appealed defendant's decision to the circuit court. The circuit court determined that plaintiff's violations were both substantial and willful, but found that the revocation of her license was an unduly harsh sanction, and therefore an abuse of discretion. Defendant now appeals.

"[T]his Court reviews for clear error a circuit court ruling concerning an administrative agency's decision." *Glennon v State Employees' Retirement Bd*, 259 Mich App 476, 478; 674 NW2d 728 (2003). A circuit court's decision is clearly erroneous if this Court is "left with the definite and firm conviction that a mistake has been committed." *Id*.

“A final agency decision is subject to court review but it must generally be upheld if it is not contrary to law, is not arbitrary, capricious, or a clear abuse of discretion, and is supported by competent, material and substantial evidence on the whole record.” *VanZandt v State Employees Retirement Sys*, 266 Mich App 579, 583; 701 NW2d 214 (2005), citing Const 1963, art 6, § 28 and MCL 24.306(1)(d). “In the absence of any statutory limitation, the choice of a penalty or sanction for violating an order of an administrative agency is consigned to the agency’s discretion.” *Ass’n of Businesses Advocating Tariff Equity v Pub Serv Comm*, 212 Mich App 371, 380; 538 NW2d 30 (1995), citing *Marrs v Bd of Med*, 422 Mich 688, 695; 375 NW2d 321 (1985). An abuse of discretion occurs when a decision “falls outside the range of principled outcomes.” *Detroit Fire Fighters Ass’n, IAFF Local 344 v Detroit*, 482 Mich 18, 28; 753 NW2d 579 (2008), citing *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). “A reviewing court must not substitute its discretion for that of the administrative tribunal even if the court might have reached a different result.” *Huron Behavioral Health v Dep’t of Community Health*, 293 Mich App 491, 497; 813 NW2d 763 (2011). A circuit court may not reverse an administrative decision simply because it finds it inequitable. *Id.* at 498.

The circuit court clearly erred by finding that defendant had abused its discretion in revoking plaintiff’s certificate. MCL 722.121(2) provides in pertinent part as follows:

The department may deny, revoke, or refuse to renew a license or certificate of registration of a child care organization when the licensee, registrant, or applicant falsifies information on the application or willfully and substantially violates this act, the rules promulgated under this act, or the terms of the license or certificate of registration.

The circuit court agreed with the director’s conclusion that plaintiff had committed substantial and willful violations of defendant’s rules. The court found, however, that revocation of plaintiff’s certificate was an abuse of discretion because it was an unduly harsh sanction. In doing so, the circuit court improperly substituted its discretion for that of defendant. Defendant was authorized under MCL 722.121(2) to revoke plaintiff’s certificate of registration due to her violations. The circuit court was not permitted to reverse defendant’s decision because it found it inequitable or would have reached a different result.

Reversed.

/s/ David H. Sawyer  
/s/ Jane M. Beckering  
/s/ Douglas B. Shapiro